

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WAUSAU UNDERWRITERS INSURANCE
COMPANY and AXIS SPECIALTY INSURANCE
COMPANY,

Index No. 06 CV 3212 (VM)

Plaintiffs,

-against-

QBE INSURANCE CORPORATION and
SCOTTSDALE INSURANCE COMPANY,

**NOTICE OF MOTION
FOR PARTIAL
SUMMARY JUDGMENT**

Defendants.
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M A D A M S / S I R S :

PLEASE TAKE NOTICE that, upon the affidavit of Michael Morrissiey, sworn to on the 16th day of October, 2006, the affidavit of Marshall T. Potashner, sworn to on the 18th day of October, 2006, the exhibits annexed thereto, Plaintiffs' Local Civil Rule 56.1 Statement, the accompanying Memorandum of Law, and the prior proceedings and pleadings herein, plaintiffs WAUSAU UNDERWRITERS INSURANCE COMPANY and AXIS SPECIALTY INSURANCE COMPANY will move this Court on a date and at a time to be determined by the Court, before the Honorable Victor Marrero at the United States Courthouse located at 500 Pearl Street, Courtroom 20B, New York, New York 10007, for an Order, pursuant to Fed. R. Civ. P. 56, granting partial summary judgment on the first claim for relief in the Complaint, determining and declaring that defendant QBE INSURANCE CORPORATION ("QBE") is required to provide a defense to Barney Skanska Construction Co. and the New York City Economic Development Corp. for the action entitled John Moore v. New York City Economic Development Corp., New York


City Department of Transportation, Barney Skanska Construction Company, Kel Tech Construction Inc., Index No. 13658/04, which is pending in the Supreme Court of the State of New York, County of Richmond (the "Underlying Action"), determining and declaring that coverage under plaintiffs' policies is excess over the coverage afforded under the QBE policy, and granting plaintiffs the costs and disbursements of this action together with such other and further relief as which this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order of the Honorable Victor Marrero, any opposing affidavits and memoranda must be filed and served by November 9, 2006.

Dated: New York, New York
October 18, 2006

Yours, etc.,

JAFFE & ASHER LLP

By: 

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